cert. denied

SUPREME COURT OF THE UNITED STATES

No. 348.—October Term, 1952.

Abraham J. Isserman, Petitioner, *v.* Ethics Committee of the Essex County Bar Association.	On Petition for a Writ of Certiorari to the Supreme Court of the State of New Jersey.

[April 6, 1953.]

Mr. Justice Black, with whom Mr. Justice Douglas agrees.

I would grant this certiorari. It involves an order of the New Jersey Supreme Court permanently disbarring petitioner from the practice of law in that state. The Court's order rests on petitioner's conviction of contempt in a federal district court, affirmed by this Court in *Sacher* v. *United States*, 343 U. S. 1. The record of the New Jersey proceedings before us leaves me with the belief that the state failed to afford petitioner the kind of a hearing required by the Due Process Clause of the Fourteenth Amendment. Although petitioner was allowed to appear before a local bar committee and to present a formal answer and make oral argument before the State Supreme Court, the full record persuades me that he was denied an adequate opportunity to confront witnesses against him and to offer evidence in his behalf. Instead of hearing evidence and making its own findings the state court's order was based on findings made by a federal district judge who had summarily convicted petitioner of contempt without a hearing. I believe that a lawyer is denied due process when he is expelled from his profession without ever having been afforded an opportunity to confront his accusers and present evidence to deny, explain or extenuate the charges against him. See *Ex parte Robinson*, 19 Wall. 505, 512-513, and *In re Oliver*, 333 U. S. 257.

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 348

ABRAHAM J. ISSERMAN,
Petitioner,

vs.

ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

LEONARD B. BOUDIN,
Counsel for Petitioner.

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ETHICS COMMITTEE OF THE ESSEX COUNTY BAR ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioner, Abraham J. Isserman, prays that a writ of certiorari issue to review the orders of the Supreme Court of the State of New Jersey disbarring petitioner and denying his petition for rehearing.

Opinions Below

The opinions of the Supreme Court of New Jersey are reported at 9 N. J. 269 and 9 N. J. 316.

Jurisdiction

The order of the court below disbarring petitioner was entered on March 24, 1952 and his petition for a rehearing

was denied on April 28, 1952. On July 10, 1952, Mr. Justice Harold H. Burton of this Court entered an order extending the time for filing a petition for certiorari to and including September 24, 1952. Jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

Questions Presented

1. Whether petitioner's disbarment without a hearing and an opportunity to offer evidence in his defense did not deprive him of liberty and property without due process of law and deny him the equal protection of the laws of the State of New Jersey, in violation of the Fourteenth Amendment to the Constitution of the United States.

2. Whether petitioner was not further denied due process and equal protection of laws by the reliance of the court below upon a conspiracy charge of which petitioner had been exculpated and upon the conduct of other persons.

3. Whether the disbarment was not arbitrary and without cause and in further violation of the Fourteenth Amendment since the petitioner was not guilty of moral turpitude, his conviction for contempt did not justify the extreme penalty of disbarment, and he had been exculpated by the federal court with jurisdiction over his conduct of many of the charges upon which the state court relied.

4. Whether the order below did not constitute an interference with the federal judiciary and its control over its Bar and with petitioner's right to practice before the federal courts, all in violation of the Fourteenth Amendment and of Article III of the Constitution of the United States.

Constitutional Provisions Involved

Amendment XIV, Section 1, to the Constitution of the United States reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citi-

> zens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article III, Section 1, of the Constitution reads, in relevant part, as follows:

> "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Statement

Petitioner, a member since 1923 of the Bar of the Supreme Court of New Jersey, herein referred to as the state court, was disbarred on March 17, 1952 by that court because of his conviction for contempt in *United States* v. *Sacher, et al.*, 9 F. R. D. 394, aff'd; *sub nom. Sacher* v. *United States*, 182 F. 2d 416, aff'd 343 U. S. 1 (R. 30). That conviction had been based upon his representation as attorney for certain of the defendants in *Dennis* v. *United States*, 341 U. S. 494, before the United States District Court for the Southern District of New York, herein referred to as the federal court. The state court acted upon the conviction for contempt, made no independent review of the evidence and rejected petitioner's prayer for a trial at which he could defend himself (R. 17, 28). It also considered matters dehors the record without prior notice to petitioner (R. 29).

The proceeding sought herein to be reviewed was instituted in the state court on November 17, 1949, following a report of the Ethics Committee of the Essex County Bar Association, which recited petitioner's federal conviction for contempt (R. 1). Attached to this report were the minutes of the only session held by the Committee (R. 55).

They show that the Committee had decided not to take any action against or make any recommendation pertaining to petitioner but merely to call the matter to the state court's attention and transmit petitioner's request for a deferment of any hearing by reason of his pending appeal from the conviction for contempt. Nevertheless, the Chief Justice of the state court, proceeding as if the Ethics Committee had made the customary report on the merits after plenary hearing, issued a rule to show cause why petitioner should not be disciplined (R. 2). On the return day the state court continued the rule to show cause without date (R. 21). On June 7, 1951 it issued a second rule to show cause (R. 3), in response to which, petitioner filed a motion for a continuance (R. 7) and an answer denying that the conviction for contempt was a ground for disbarment, requesting a hearing and an opportunity to present his defense therein (R. 4). The court continued the rule to show cause by reason of the pendency in this Court of an application for re-argument on the denial for certiorari in *Sacher* v. *United States, supra.*

Subsequent to this Court's decision affirming the judgment of conviction in the *Sacher* case, the said rule to show cause was made returnable on March 17, 1952 by oral notice. At that time petitioner filed his amended and supplemental answer, requesting again an opportunity to be heard and to offer evidence in mitigation and exculpation and other matters of defense (R. 11, 17), which the court received without opposition.

The state court, ignoring both the original and amended and supplemental answers, and the issues of fact raised therein, gave petitioner no hearing, made no reference of the matter and summarily disbarred petitioner on March 24, 1952 (R. 30). On April 3, 1952 petitioner filed his petition for rehearing (R. 32), which was denied by the state court on April 28, 1952 in an opinion and order (R. 77, 81).

The state court's judgment was based in large part upon petitioner's conviction on Count I in the federal contempt case, which alleged a conspiracy to obstruct justice. But the conviction on this Count was reversed by the Court of Appeals for the Second Circuit, *Sacher* v. *United States*, 182 F. 2d 416. And subsequently after hearing, petitioner was acquitted of the conspiracy charge in federal disciplinary proceedings (*In the Matter of Harold Sacher, et al.*, U. S. D. C., S. D. N. Y., M 19-66 (unreported).

The state court also relied upon the *comments* made by several federal judges upon the behavior of the various defense lawyers in the *Dennis* case. None of these comments was made by a court which reviewed evidence adduced in a hearing based on charges of professional misconduct. Thus one comment was that of the Chief Judge of the United States Court of Appeals in *Dennis* v. *United States, supra*, which involved the issue of the trial judge's misconduct, not that of the petitioner and the other lawyers. The remarks of the Second Circuit Judges in the *Sacher* case occurred in an appeal upholding the trial judge's right summarily to convict petitioner and others of contempt without a hearing. The remarks of Mr. Justice Jackson in the *Sacher* case were even further removed from a judicial determination on the merits since this Court had limited certiorari to the question of procedure. Finally, none of the quotations relied on made any distinction among the defense attorneys. As a result, each such attorney was invested with responsibility for the cumulative actions of all the other attorneys.[1]

While the proceedings before the state court were pending, petitioner was given elsewhere the first and only trial he has received to this day. Federal disbarment proceed-

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[1] The state court, as its opinion reveals, likewise attributed to petitioner all the acts of his associate counsel.

ings were instituted against him by two bar associations in the court where the contempt had occurred (R. 16, 38). Petitioner, upon the filing of his answer, alleging that his conduct in the *Dennis* case "was not unprofessional or deserving of the disciplinary action sought by the petition", was given a hearing by the federal court. (*In the Matter of Harold Sacher, et al., supra.*) Thereafter, United States District Judge Hincks acquitted petitioner of the charge of conspiracy and held that certain of the other contempt specifications upon which he had been convicted without hearing in the contempt proceeding did not warrant disciplinary action. The district judge upheld certain of the charges against petitioner and ordered that he be suspended from the bar of that court for the period of two years (R. 16-17, 19), from which ruling an appeal is now pending.

Reasons Why the Writ Should Be Granted

1. Petitioner was entitled to a hearing on the merits before he could be deprived of his professional status and livelihood. That is the mandate of the Fourteenth Amendment. A hearing in a constitutional sense means more than a right to oral argument. It comprehends an opportunity to offer evidence and to be heard in one's own defense. (*In re Oliver*, 333 U. S. 257; *Windsor* v. *McVeigh*, 93 U. S. 274, 277, 278.)

This principle has uniformly been applied to disciplinary proceedings. It has been repeatedly recognized that an attorney has a right to a hearing before he is disbarred. (*Bradley* v. *Fisher*, 80 U. S. (13 Wall.) 335, 355; *United States* v. *Hicks, In re Ewell*, 37 F. 2d 289 (C. A. 9th); *In re Noell*, 83 F. 2d 5 (C. A. 8th, 1937 aff'g), 21 Fed. Sup. 379 (D. C. E. D. Mo.) 1937; *Louisiana State Bar Association* v. *Connally*, 206 La. 883, 20 So. (2d) 168.

The state court itself recognized this principle both by citing *Ex Parte James S. Robinson,* 19 Wall. 513 (1874), and by asserting that petitioner had received the requisite hearing.

But petitioner had no such hearing either in fact or in a constitutional sense. His appearance by counsel before the Ethics Committee on November 3, 1949 was not a trial on the merits. His counsel pointed out that "any inquiry, which you might now make here, would seem to be premature" because the conviction for contempt had been appealed (R. 57) and that, he had "not yet been served with any charges" (R. 56). The Committee referred to a future decision as to "whether the matter is one in which we should have a formal hearing" (R. 65). It contemplated the issuance of "a complaint" (R. 64, 67), and stated that "if this Committee were to proceed with a hearing [that] you would want to introduce the entire record and further proof in order to challenge the fact of guilt and have this Committee try the question of contempt" (R. 69). At the close of the hearing, the Committee indicated that the state court might return the matter to it with instructions to proceed formally and that such "formal action would be in the nature of a complaint and an opportunity to be heard" (R. 72). The Committee's conclusion was stated by its Chairman as follows:

> "Mr. Unger, the Committee has concluded that it will forward to the Supreme Court a record consisting of the contempt certificate, the order of contempt, a copy of the notice of appeal—if you will leave us one of those—and a copy of the order staying the execution of the order of contempt—if you will provide us with one of those—together with a report in which it will be stated that this matter has come to our attention and we are, therefore, referring it to the Court for such action, if any, as it may desire to take. We will in our report call attention to the fact that the

> matter has been appealed from and that an appeal is pending and that there is a stay and it is scheduled presently by the Court of Appeals on December 12" (R. 73).

In response to counsel's specific inquiry, the Chairman added:

> "Yes. There will be no hearing before the Committee unless we are directed to conduct one by the Court, in which event you will, of course, receive appropriate notice." (R. 76.)

Under these circumstances, the suggestion of the state court that petitioner "had his opportunity to be heard before the Ethics Committee . . ." (R. 28) is directly contrary to the uncontroverted facts which the state court had before it.

Petitioner challenges this finding, as he has a right to do, since the preservation of his constitutional rights depends upon its examination by this court, which under the circumstances has the "solemn duty to make independent inquiry and determination of the disputed facts". (*Pierre* v. *State of Louisiana,* 306 U.S. 354, 358 (1939).

Nor did petitioner have a hearing before the state court itself. He requested such a hearing in both his original and supplemental answers. The court's opinion recognized that he had insisted on "an adequate opportunity to be heard and to present evidence on other matters in his defense on the issues before the court in this proceeding." (R. 22, 23). On his last appearance before the state court petitioner filed and the court accepted his amended and supplemental answer, which raised issues of fact by way of defense and extenuation on which he was never given the opportunity to present evidence.

The state court denied his request for a hearing on four grounds: (1) that he had had the opportunity to be

heard before the Ethics Committee; the contrary is shown by the Committee's report; (2) that he availed himself of that opportunity to "the extent of having his counsel offer certain evidence" (R. 28); this "evidence" consisted solely of papers showing the pendency of an appeal from the conviction for contempt and was submitted in support only of the motion for a deferment of a hearing on the merits (R. 73); (3) that on a certain date he had failed to request a hearing; the Record shows that he made a clear request for a hearing upon every appearance before the court; (4) that there is "no occasion" to look behind his conviction for contempt (R. 28). But New Jersey does look behind a criminal conviction, even where, unlike here, moral turpitude is involved. See, e.g., *In re Lieb*, 1 N. J. 567, 64 Atl. 2d, 880 (1949).

In its opinion in this very case the state court acknowledged that it was bound by *Ex Parte James S. Robinson, supra*, and that "conviction for contempt may not always necessitate or justify disciplinary proceedings . . ." and that it had a "constitutional duty to take such disciplinary action as in the circumstances may be warranted" (R. 25). Accordingly, in denying petitioner the right to show the "circumstances" of the conviction for contempt, in order to determine the appropriate "disciplinary action", if any, the state court not only denied petitioner due process but the equal protection of its laws. Further, it aggravated the arbitrary nature of its action by relying upon a summary conviction for contempt and by disregarding the subsequent evaluation of petitioner's conduct by a federal court after hearing.

Petitioner has a constitutional right to a hearing even if he could show no practical advantage resulting from one. But petitioner can show both the kind of hearing to which he was entitled and the benefits which are derived from

judicial consideration of the facts as against arbitrary action. Such a hearing was given him in the federal disciplinary proceedings instituted against him (*In re Harold Sacher, et al., supra*). The best description of its nature appears in the following excerpt from the opinion in that case:

> "Such being the issues raised by the petition and answer, the record of fact was made at the hearing on the merits, which was held on December 20, 1950. This was conveniently accomplished by the receipt in evidence of the 21 volumes of the record as printed for purposes of the appeal to the Court of Appeals from the judgment of conviction in the *Dennis* case. This voluminous record was offered in evidence by the petitioners and received in evidence here without objection by the respondents: neither petitioners nor respondents offered other evidence. Thereupon the parties were fully heard in oral argument and thereafter written briefs were submitted. The respondents' brief was in substance joint and several; it comprised an aggregate of 722 typed pages and incorporated hundreds of printed pages from the Dennis record. The petitioners' briefs aggregated 55 printed pages. The last brief was received on or about April 1, 1951. The vast amount of detailed material thus presented for perusal, study and analysis—not to mention the obligations attaching to full-time judicial service in a busy district —will sufficiently explain, I trust, the time, seemingly unconscionable, for the completion of this memorandum of decision."

The result was petitioner's absolution from the critical conspiracy charges and in part from certain of the specifications in the contempt certificate which the state court had accepted as conclusive.[2] In imposing a suspen-

[2] The specifications are summarized in the amended and supplemental answer herein (R. 12-14) and in the Record before this Court in the *Sacher* case. Today, three years after the heat of the *Dennis* trial, petitioner's

sion, the Court recognized petitioner's basic fitness to continue the practice of law. One could hardly find a more dramatic illustration of the reasons behind the procedural protections of the Constitution.

2. In disbarring petitioner, New Jersey denied him "the equal protection of the laws". Disbarment proceedings in New Jersey are instituted upon notice and afford the lawyer involved an opportunity to defend. See, e.g., *In re Ries*, 131 N. J. L. 559, 37 Atl. 2d 417 (1944); *In re P.*, 111 N.J.L. 569, 169 Atl. 25; *In re Trimble*, 85 N.J. Eq. 348, 95 Atl. 863; *In re Smith*, 84 N.J. Eq. 252, 94 Atl. 39; *In re Cosey*, 84 N.J. Eq., 343, 94 Atl. 54; *In re Young*, 75 N.J.L. 83, 67 Atl. 717; *In re McDermit*, 63 N.J.L. 476, 43 Atl. 685. No case has come to our attention in which a member of the New Jersey Bar has been disbarred without hearing, in the face of a demand, as here, for a hearing and opportunity to defend. Accordingly, New Jersey has not only deprived petitioner of his professional status and right to earn a livelihood in violation of the due process clause, but it has denied him a fundamental right enjoyed by other members of the Bar.

3. The state court's action further denied petitioner due

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counsel believes it literally to be an act of cruelty to use the six incidents occurring over a period of nine months as a reason for destroying an honorable career of nearly three decades. Thus, Specification VI involved nothing more than pressing a legal argument despite a court ruling, a familiar forensic practice. VII was based upon a statement that the court had misconstrued counsel's argument. XII was described by Judge Hincks as having been made in a lighter vein and without improper intent. XXVII was not sustained by Judge Hincks. XXXI consisted of making a 20-word objection which Judge Hincks held justified no disciplinary action taken by itself. XXXII consisted of orderly objections to the court's interrogation. One aspect of this was held by Judge Hincks to be improper; on the other, he ruled to the contrary. We have not attempted here, of course, to re-argue any of these matters, that being reserved for the appeal from the order in the federal disciplinary proceedings. Instead, this recitation indicates the nature of the incidents which have led the state court to end petitioner's career without any inquiry into exactly what had occurred.

process by relying principally upon a conspiracy theory from which he was exculpated (R. 23) and upon the conduct of a number of other attorneys. See *Cole* v. *Arkansas*, 333 U.S. 514.

The gravamen of the findings against petitioner is the conspiracy upon which the conviction for contempt was principally based. Absent this conspiracy, the complained of conduct consisted essentially of engaging in oral argument in violation of the trial judge's orders. The district judge who convicted petitioner of contempt stated that absent such a finding of conspiracy, he would have taken different action, 9 F.R.D. 394, 395. The report of the Ethics Committee to the state court was made prior to the reversal of the contempt conviction on the conspiracy count. The state court made formal reference in its order and opinion to the reversal on this point. But its opinion and the judicial quotations therein proceed upon the theory of conspiracy. Disbarment (particularly without hearing) based upon charges not upheld upon appeal and of which one is in fact acquitted after a hearing is plainly arbitrary and totally without cause. As such, it deprives petitioner of his constitutional right to a fair trial.

Further, the state court, in relying upon the remarks made by the various federal appellate judges, treated petitioner as if he had been guilty of all the specifications made against all of his colleagues in the *Dennis* case. For the remarks of the federal judges were primarily *obiter dicta* reflecting upon the cumulative activities of all the lawyers. They did not attempt to distinguish between the specifications against petitioner and those against the other lawyers.

But petitioner had a constitutional right to be tried exclusively upon charges relating to his own alleged misconduct. The state court had no right to ascribe the

activities of four other lawyers to petitioner and to conclude that petitioner should be punished for the cumulative conduct ascribed to all.

4. The disbarment was arbitrary and without cause. Petitioner was not guilty of moral turpitude and was exculpated by the only court which took testimony on the subject and which had jurisdiction over his conduct of many of the charges upon which the state court relied.

When petitioner finally had his federal disciplinary hearing before District Judge Hincks, he was able for the first time to defend himself against the conspiracy charge and to justify or explain various incidents with which he was charged. The result was to leave against his record little more than incidents of expressions of undue vigor or of arguments continued in the face of judicial instructions, often ambiguous, to the contrary. Judge Hincks who, alone of all the judges involved, had both read the full record and heard petitioner's explanations, concluded that petitioner should be suspended for two years, and stated that "his attitude as disclosed on the record and on his brief herein leaves room for reasonable expectation that the experience of discipline may have such restraining effect on his courtroom behavior that in the future he may be safely expected to exercise without abuse the privileges of membership in this Bar." Inherent in his opinion is the conclusion that petitioner was not guilty of moral turpitude or of course of a crime involving it. The law in New Jersey, as elsewhere, permits disbarment for moral turpitude or crime, not for any cause deemed sufficient by the disciplining court. See *In re Ries*, 131 N.J.L. 559, 37 Atl. 2d 417 (1944). Contempt *per se* is not a ground for disbarment in New Jersey. *In re P.*, 83 N. J. Eq., 390, 91 Atl. 326 (1914). Our examination of New Jersey case law does not reveal a single disbarment for contempt of court alone; instead, contempts have been followed by suspension; *In re Megill et al.*, 114

N. J. Eq. 604, 169 Atl. 501, or by fines; *In re Mindes*, 88 N. J. Law, 117, 95 Atl. 74[illegible] Even cases involving moral turpitude have been followed only by suspension. *In re Rosenkrans*, 84 N. J. Eq. 232, 94 Atl. 42; *In re Breidt*, 84 N. J. Eq. 222, 94 Atl. 214. Therefore, in disbarring petitioner, New Jersey not only denied him due process but the equal protection of its laws.

This Court has said that a state court's power to disbar "is not an arbitrary and despotic one" but one to be exercised "by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself" (*Ex parte Secombe*, 60 U. S. 9. See also: *In re Fisher*, 179 F. 2d, 361 (C.A. 7), *cert. den.* 340 U. S. 825; *United States* v. *Hicks*, *supra*. The state court's action and its two opinions do not meet the constitutional test.

5. The state court's action has created a novel and important problem in federal-state judicial relations. Petitioner has been disbarred by the state court for his criticized representation of defendants under federal indictment. Had New Jersey given petitioner the hearing which he demanded, it would then have scrutinized his objections, arguments, exceptions, in fact the totality of his conduct, in the trial in *Dennis* v. *United States*, *supra*. The state court is not constitutionally entitled thus to supervise petitioner's obligations to court and client in a federal trial. If it were, every lawyer in a federal case would be governed in his actions not alone by the federal court's rulings and standards but by those which he must anticipate would be required by his state court. We submit that petitioner was not an emissary of New Jersey in his appearance before the federal court, but a member of the federal Bar subject in his conduct solely to the jurisdiction of the federal court. New

Jersey's concern with his federal court behavior would create another supervisory body over his conduct in interference with his representation of his client before the federal court and with the exclusive judicial power of the latter.

New Jersey's invasion of the federal area is emphasized in this case by Judge Hinck's evaluation of petitioner's conduct. If he had completely acquitted petitioner, it is not conceivable that New Jersey nevertheless could punish him. Why, then, can it presume drastically to increase the penalty? Surely, his censure and suspension do not in principle permit New Jersey's interference by state disbarment because it takes a different view than the federal court of petitioner's relationship with and conduct before that court.

The effect of New Jersey's overseership of petitioner's federal conduct is well illustrated in this case. Judge Hincks suspended petitioner from federal practice. But state disbarment can result in his federal disbarment. Rule 4, U.S.D.C., S.D.N.Y. Such proceedings have actually been commenced despite Judge Hincks' decision. New Jersey will thus have superseded the federal courts in determining petitioner's status in the federal bar.

6. The problems set forth above are of fundamental importance to petitioner and other members of the federal bar. This Court has issued its rule to show cause why petitioner should not be disbarred by it because of the action of the state court. While this Court is not bound by New Jersey's decree, (*Selling* v. *Radford*, 243 U. S. 46; *Ex Parte Tillinghast*, 4 Pet. 108) it will at least require petitioner to show that it violated his constitutional rights or should otherwise be disregarded. That issue can best be resolved by a review of New Jersey's action in this case. The same issue may be brought before this Court in the pending federal court proceedings to disbar him and in the ultimate review of a proceeding instituted by the Department of Justice to exclude

him from practice before the Board of Immigration Appeals and the Immigration and Naturalization Service.

Each of the attorneys involved in the *Dennis* case may be confronted by similar problems and, of course, all practitioners before the federal courts must be concerned over this new state court supervision of their conduct as members of the federal Bar and the summary methods used by the state court below in violation of established substantive and procedural law and the constitutional rights of members of the federal Bar.

Conclusion

Is there to be no end to petitioner's punishment without hearing for the same offense? Is each tribunal, state and federal, before which he has practiced entitled constitutionally to intervene and punish him for the same conduct, particularly when the federal court in which the actions occurred has determined the appropriate discipline? Has he forfeited every professional honor and means of livelihood as the result of six relatively minor incidents in a nine months' trial?

The heart of New Jersey's decision is petitioner's summary conviction for contempt. In the view of three members of this Court, the conviction was improper because petitioner was denied an opportunity to defend himself. But New Jersey has compounded both the injury and the invasion of petitioner's rights. Without the constitutional justification for a summary contempt adjudication, it has denied petitioner a hearing by declaring that the earlier conviction without hearing was conclusive. This, despite the fact that in the past it provided disciplinary hearings even to persons convicted *after trial.*

But even if petitioner had been given a hearing, New Jersey had no right to deprive him of his profession and livelihood because of a few brief occurrences in the course

of a long trial, from many of which he was either completely or partially exculpated after a federal disciplinary trial. Whatever may be the extraordinary power of a judge to punish for contempt, these acts could not possibly justify the destruction of an honorable career of twenty-nine years under the guise of discipline.

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

LEONARD B. BOUDIN,
Attorney for Petitioner.

September 22, 1952.